IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3811 OF 2006.

1. DSQ Holdings Ltd.
   registered office at
   11/1A, Chowringhee Terrace,
   Kolkatta 700 020.

2. Mr.S,Govindrajan,
   Director, DSQ Holdings Ltd.

3. Mr.Thiagarajan,
   Authorised signatory,
   DSQ Holding Ltd.

   All having their office
   at 11/1A Chowringhee Terrace,
   Kolkatta 700 020. ... Applicants.

Versus.

1. Infrastructure Leasing and
   Financial Services Ltd.,
   having its registered office
   at the IL & FC Financial Centre,
   Plot No.C-22, "G" Block,
   Bandra-Kurla Complex,
   Bandra (E), Mumbai 400 051.

2. The State of Maharashtra. ... Respondents.

Ms.Shubhada Khot for the Applicants.

Shri S.V.Marwadi for the Respondent No.1.

Shri D.P.Adsule for Respondent-State.

CORAM : ABHAY S.OKA, J.

DATED : 18th December, 2006.

ORAL JUDGMENT.:

1. Rule. The learned Advocate appearing for the 1st Respondent waives service. The learned A.P.P.

waives service for the 2nd Respondent.

2. The Applicants have been arraigned as accused in a complaint filed by the 1st Respondent under section 138 of the Negotiable Instrument Act, 1881. The Applicants preferred Criminal Revision Application No.407 of 2005. By the impugned order dated 22nd September 2005, the learned Additional Sessions Judge dismissed the Revision Application filed by the Applicant. Thereafter the Applicant filed a Miscellaneous Application praying for recall of the said order on the ground that the Applicants were not heard and the Revision Application has been decided on merits in their absence. The said Application came to be rejected by the order dated 31st March 2006.

3. I have heard the learned Counsel appearing for the parties. Shri Marwadi appearing for the 1st Respondent submits that the learned Additional Sessions Judge was well within his powers to decide the Revision Application on merits even in the absence of the Applicants and their Advocate. He pointed out that there was a delay in filing the Revision Application and the Applicants even did not bother to apply for condonation of delay. He stated that without prejudice to his aforesaid contention, he has no objection if the impugned order is set aside and the Applicants are

directed to apply for condonation of delay in filing the Revision Application.

4. The learned Advocate for the Applicants states that the Applicants are ready and willing to file an Application for condonation of delay.

5. In view of this position, the Application is disposed of by passing the following order:

i) The impugned Judgment and Order dated 22nd September 2005 is quashed and set aside and the Criminal Revision Application No.407 of 2005 is restored.

ii) Time is granted to the Applicants to file an Application for condonation of delay till 12th January 2007. If the Application for condonation of delay is not filed within the stipulated time, the Revision Application will stand dismissed without further reference to the Court.

iii) If the Application for condonation of delay is filed, the 1st Respondent will be entitled to oppose the said Application on all available grounds.

iv) If the Application for condonation of delay is allowed, the Criminal Revision Application filed by the Applicants will be heard on its own merits without being influenced by the fact that the earlier order passed by the Sessions Court on merit has been set aside by this Court.

v) All contentions of the parties are kept open.

Judge.